

**WAUKESHA COUNTY BOARD OF ADJUSTMENT  
SUMMARY OF MEETING  
FEBRUARY 9, 2005**

The following is a Summary of the Board of Adjustment Meeting held on Wednesday, February 9, 2005, at 6:30 p.m. in Room 255/259 of the Waukesha County Administration Center, 1320 Pewaukee Road, Waukesha County Wisconsin, 53188.

**BOARD MEMBERS PRESENT:** James Ward, Chairman  
Robert Bartholomew  
Paul Schultz  
Walter Tarmann  
Ray Dwyer

**BOARD MEMBERS ABSENT:** Walter Schmidt

**SECRETARY TO THE BOARD:** Sheri Mount

**OTHERS PRESENT:** Mary E. Finet, Waukesha County Planning & Zoning Division  
Russell Wambold, BA05:002, neighbor of petitioner  
Dave Youngberg, BA05:003, neighbor of owner  
Andrew Kluck, BA05:003, owner/petitioner  
Karen Hollander, BA05:003, architect/petitioner  
Bret and Linda Sanders, BA05:002, petitioners  
Bonnie Peterson, BA05:001, petitioner  
Matt Heaton, BA05:004, architect

The following is a record of the motions and decisions made by the Board of Adjustment. Detailed minutes of these proceedings are not produced, however, a taped record of the meeting is kept on file in the office of the Waukesha County Department of Parks and Land Use, and a taped copy or transcript is available, at cost, upon request.

**SUMMARIES OF PREVIOUS MEETINGS:**

Mr. Ray Dwyer                      *I make a motion to approve the Summary of the Meeting of January 26, 2005.*

The motion was seconded by Mr. Robert Bartholomew and carried unanimously.

**NEW BUSINESS:**

**BA05:001 BONNIE PETERSON**

Mr. Walter Tarmann              *I make a motion to deny the request for the road setback variance and to approve the request for a special exception in accordance with the staff's recommendation, with the conditions stated in the Staff Report, for the reasons stated in the Staff Report and with the following addition:*

*Add Condition No. 5 to read as follows: Prior to the issuance of a zoning permit, a stake-out survey, prepared by a registered land surveyor, showing the location of the proposed garage, in conformance with the all other conditions of approval, must be submitted to the Planning and Zoning Division staff for review and approval.*

The motion was seconded by Mr. Ray Dwyer and carried unanimously.

The staff's recommendation was **denial** of the request for a variance from the road setback requirements and **approval** of the request for a special exception from the accessory building floor area ratio requirements approval, with the following conditions:

1. The total accessory building floor area on the property must not exceed a total of 874 sq. ft. This will provide an accessory building floor area ratio of 5.8 % as proposed.
2. The existing detached garage must be removed prior to the issuance of the Zoning Permit for the proposed garage.
3. The garage must contain only one story and it must conform with the height requirements of the Ordinance, i.e. the maximum height of the garage, as measured from the lowest point of the structure to the highest point of the primary horizontal soffit of the uppermost floor, must not exceed 15 ft.; however, the maximum height of the garage may be increased by no more than ten (10) ft., providing all required offset and setbacks are increased by one (1) foot for each foot in which the garage exceeds the height limit of 15 ft. The proposed garage may contain an upper-level storage area only if the garage conforms to the height requirement noted above, and only if that upper level is not accessible via a permanent staircase. The upper level of the garage may only be accessed via pull-down stairs.
4. If any changes to the existing grade are proposed, a detailed Grading and Drainage Plan, showing existing and proposed grades and any proposed retaining walls, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division Staff for review and approval, prior to the issuance of a Zoning Permit. This is to ensure the construction of the proposed garage does not result in adverse drainage onto adjacent properties. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake and not to the neighboring properties or the road.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

The property will allow enough space for the detached garage with the proposed dimensions to be constructed in a location that would not require a variance from the road setback requirements. Therefore, it has not been demonstrated, as required for a variance, that denial of the requested variance would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity

with such restrictions unnecessarily burdensome. The approved request for a special exception from the accessory building floor area ratio, with the recommended conditions, will permit the construction of a detached garage and allow the petitioner reasonable use of the property. The proposed garage is a reasonable size and would meet all of the locational requirements of the Ordinance. The approval of this request, as recommended, is not contrary to the public interest. Therefore, the approval of this request, with the recommended conditions, is in conformance with the purpose and intent of the Ordinance

**BA05:002 BRET AND LINDA SANDERS**

Mr. Paul Schultz

*I make a motion to deny the Sanders' request in accordance with the staff's recommendation, for the reasons stated in the Staff Report.*

The motion was seconded by Mr. Robert Bartholomew and carried unanimously.

The staff's recommendation was for **denial** of the requests for variances from the private road setback, offset, shore setback, floodplain setback, floor area ratio, open space and a remodel/expansion of a non-conforming structure in excess of 50% of its fair market value requirements of the Ordinance and **denial** of the request for a special exception from the minimum first floor area requirement of the Ordinance.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

It has not been demonstrated, as required for a variance, that denial of the requested variances would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It would not be unnecessarily burdensome to continue utilizing the property as is. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, when granting special exceptions, the Board must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions as they deem necessary for the protection of adjacent properties and the public interest and welfare.

The residence currently has 1,583 sq. ft. of living and storage space, which is a reasonable use for a property that is 3,600 sq. ft. in size. The structure and lot are already substantially non-conforming in relation to the private road setback, offset, lake setback, floodplain setback, floor area ratio, and open space requirements in the Ordinance. In addition, due to the fact that the property and structure are located within the 100-year floodplain of Eagle Spring Lake and it appears that it has an outdated/failing septic system likely located in the groundwater, the granting of the requested variances to expand and prolong the life of this structure would be detrimental to the public interest and would negatively impact the natural resources in the area.

**BA05:003 ANDREW KLUCK – OWNER (Karen Hollander – Petitioner)**

Mr. Jim Ward

*I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report with the following modifications:*

*Condition No. 3 shall read as follows: The proposed garage may contain an upper-level storage area only if the garage conforms to the height requirements of the Ordinance and only if that upper level is not accessible via a permanent staircase or access from the residence. The upper level of the garage may be accessed via pull-down stairs only.*

*Condition No. 10 shall read as follows: The two non-conforming sheds must be removed from the property within 12 months of issuance of the Zoning Permit. Once the sheds are removed, the petitioner or the owner shall inform Planning and Zoning Division staff, so that a site inspection can be made.*

The motion was seconded by Mr. Robert Bartholomew and carried with four yes votes. Mr. Paul Schultz opposed.

The staff's recommendation was for **denial** of the request for a variance from the offset requirements, **approval** of the request for variances from the road setback, shore setback, floodplain setback, floor area ratio, open space, and the remodeling or expanding a non-conforming structure in excess of 50% of its fair market value provisions and **approval** of the request for special exceptions from the offset and minimum first floor area requirements of the Ordinance, with the following conditions:

1. The proposed expanded residence must be no closer than the existing structure to the lot line, the lake and the floodplain, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the offset/setback requirements.
2. The garage must not exceed 528 sq. ft. in size. The total floor area on the property may not exceed 1,978 sq. ft. (42% floor area ratio).
3. The garage must contain only one story as measured from the existing road elevation. The proposed garage may contain an exposed basement level only if it conforms with the height requirement of the Ordinance, i.e. the height of the attached garage, as measured from the lowest point of the exposed structure to the highest point of the primary horizontal soffit of the uppermost floor, must not exceed 35 ft.
4. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a sanitary permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.

5. Prior to the issuance of a Zoning Permit, the Oconomowoc Town Board must approve the location of the proposed garage partially within the established road right-of-way, and evidence of that approval must be submitted to the Planning and Zoning Division staff.
6. A Declaration of Restrictions shall be prepared by the Planning and Zoning Division staff, stating the garage is located partially within the established road right-of-way and if, in the future, any portion of the garage should interfere with necessary road improvements, that portion of the garage must be removed at the owner's expense. Prior to the issuance of a Zoning Permit, the Declaration of Restrictions must be signed by the owner, notarized, and recorded in the Waukesha County Register of Deed's Office, and a copy furnished to the Planning and Zoning Division staff.
7. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.
8. Prior to the issuance of a Zoning Permit, a stake-out survey showing the location of the proposed residence, attached garage, and any other appurtenances, in conformance with the above conditions, must be prepared by a registered land surveyor and submitted to the Planning and Zoning Division staff for review and approval. If this survey shows that the proposed garage is not located within the established road right-of-way, then Conditions No. 5 and 6 will not be required.
9. Prior to issuance of a Zoning Permit, a detailed cost estimate must be submitted to the Planning and Zoning Division staff.
10. Prior to the issuance of a Zoning Permit, the two non-conforming sheds must be removed from the property. Once the sheds are removed, the petitioner or the owner shall inform Planning and Zoning Division Staff, so that a site inspection can be made.
11. In order to ensure the proposed construction does not result in adverse drainage onto adjacent properties, a detailed Grading and Drainage Plan, showing existing and proposed grades, must be prepared by a registered landscape architect, surveyor, or engineer and submitted to the Planning and Zoning Division staff for review and approval, prior to the issuance of a Zoning Permit. The intent is that the property be graded according to the approved plan, and also to provide that the drainage remain on the property or drain to the lake, and not to the neighboring properties or the road. The following information must also be submitted along with the Grading and Drainage Plan: a timetable for completion, the source and type of fill, a complete Vegetative Plan including seeding mixtures and amount of topsoil and mulch, an Erosion and Sediment Control Plan, and the impact of any grading on stormwater and drainage. This Grading Plan may be combined with the plat of survey required in Condition No. 8.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested variances from road setback, shore setback, floodplain setback, floor area ratio, open space, and the remodeling or expanding a non-conforming structure in excess of 50% of its fair market value provisions, approval of the request for special exceptions from the

offset and minimum first floor area requirements and denial of the request for a variance from the offset requirements of the Ordinance with the recommended conditions, allows the petitioner reasonable use of the property.

It has not been demonstrated, as required for a variance, that denial of the requested variance from the offset requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It is possible to construct a reasonably sized garage that remains 10 ft. from the lot lines.

A hardship exists with respect to open space because it is impossible to conform to the minimum open space requirement of 10,000 sq. ft. when the lot is only 4,678 sq. ft. in size. The recommended floor area of 1,978 sq. ft. allows the petitioner a reasonably sized residence for a lot of this size and an attached garage.

Approval of the requested special exceptions from the minimum floor area ratio and offset requirements ensures there will be no expansion of the existing footprint, while also allowing for a small addition on the second floor over the existing first floor. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, when granting special exceptions, the Board must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions as they deem necessary for the protection of adjacent properties and the public interest and welfare.

The recommended residence with attached garage will not be any closer to the shore, the floodplain and the northern lot line; and the recommended garage will be in conformance with the lot line offsets. It should also be noted that this approval, as conditioned, would result in the removal of two very non-conforming structures on the property. The recommended residence and attached garage would not adversely affect the lake or the neighboring property owners and is not contrary to the public interest. Therefore, the approval of variances from road setback, shore setback, floodplain setback, floor area ratio, open space, and the remodeling or expanding a non-conforming structure in excess of 50% of its fair market value provisions of the ordinance, approval of the request for special exceptions from the offset and minimum first floor area requirements and denial of the request for a variance from the offset requirements of the Ordinance, with the recommended modifications and conditions, is in conformance with the purpose and intent of the Ordinance.

#### **BA05:004 RONALD AND MARIETTA MARSHALL**

Mr. Robert Bartholomew

*I make a motion to adopt the staff's recommendation, with the conditions stated in the Staff Report and for the reasons stated in the Staff Report with the following modification:*

*Condition No. 1 shall read: There shall be no expansion of the structure outside of the existing footprint other than for the construction of the stairway on the southeast side of the residence as shown on the submitted plans. The proposed expanded residence must be no closer than the existing structure to all lot lines, the road, the lake and the floodplain as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the building must be located so that the outer edges of the overhangs conform to the offset/setback requirements.*

The motion was seconded by Mr. Paul Schultz and carried unanimously.

The staff's recommendation was for **denial** of the request for a variance from the offset requirements, **approval** of the request for variances from the floor area ratio, open space and the remodel of a non-conforming structure in excess of 50% of its fair market value and **approval** of the request for special exceptions from the minimum first floor area requirements of the Ordinance, with the following conditions:

1. There shall be no expansion of the structure outside of the existing footprint. The proposed expanded residence must be no closer than the existing structure to all lot lines, the road, the lake and the floodplain, as measured to the outer edges of the walls, provided the overhangs do not exceed two (2) ft. in width. If the overhangs exceed two (2) ft. in width, the addition to the residence must be located the additional distance from the side lot lines, shore or floodplain as the overhangs exceed two (2) ft. in width.
2. The total floor area on the property may not exceed 1,910 sq. ft. (20.5%), including the existing detached garage.
3. Prior to the issuance of a Zoning Permit, the Environmental Health Division must certify that the existing septic system is adequate for the proposed construction, or a Sanitary Permit for a new waste disposal system must be issued and a copy furnished to the Planning and Zoning Division staff.
4. Prior to the issuance of a Zoning Permit, a complete set of house plans, in conformance with the above conditions, must be submitted to the Planning and Zoning Division staff for review and approval.

The reasons for the recommendation, as stated in the Staff Report, are as follows:

Approval of the requested variances from floor area ratio, open space and the remodel of a non-conforming structure in excess of 50% of its fair market value, approval of the request for special exceptions from the offset and minimum first floor area requirements and denial of the request for a variance from the offset requirements of the Ordinance with the recommended conditions, allows the petitioner reasonable use of the property and is in conformance with the purpose and intent of the Ordinance.

It has not been demonstrated, as required for a variance, that denial of the requested variance from the offset requirements would result in an unnecessary hardship. A hardship has been defined by the Wisconsin Supreme Court as a situation where compliance with the strict letter of the restrictions governing area, setbacks, frontage, height, bulk or density would unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome. It is possible to re-design the second floor addition so that the proposed structure remains 10 ft. from the northeast property line.

A hardship exists with respect to open space because it is impossible to conform to the minimum open space requirement of 10,000 sq. ft. when the lot is only 9,284 sq. ft. in size. The recommended floor area of 1,910 sq. ft., including the existing detached garage, allows the petitioner a reasonably sized residence for a lot of this size.

Approval of the requested special exceptions from the minimum floor area ratio and offset requirements ensures that there will be no expansion of the existing footprint, while also allowing for a small addition on the second floor over the existing first floor. The recommended residence will not be any closer to the shore, the floodplain or the property lines. A special exception differs from a variance in that a special exception does not necessarily require the demonstration of an unnecessary hardship. However, when granting special exceptions, the Board must still consider whether the proposed special exception would be hazardous, harmful, noxious, offensive or a nuisance to the surrounding neighborhood by reason of physical, social or economic effects, and the Board may impose such restrictions or conditions as they deem necessary for the protection of adjacent properties and the public interest and welfare.

The recommended residence would not adversely affect the lake or the neighboring property owners and is not contrary to the public interest. Therefore, the approval of the variances from floor area ratio and open space, the approval of the request for special exceptions from the offset and minimum first floor area requirements and denial of the request for a variance from the offset requirements of the Ordinance, with the recommended modifications and conditions, is in conformance with the purpose and intent of the Ordinance.

#### **OTHER ITEMS REQUIRING BOARD ACTION: NONE**

#### **ADJOURNMENT:**

Mr. Robert Bartholomew

*I make a motion to adjourn this meeting at 8:55 p.m.*

The motion was seconded by Mr. Ray Dwyer and carried unanimously.

Respectfully submitted,

Sheri Mount  
Secretary, Board of Adjustment